THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 10th day of April,2007

W.P.No.9362 of 1998

Between:-

M. Narasimha Reddy … Petitioner

and

The Registrar, Kakatiya University,
Vidyaranyapuri, Warangal-9
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9362 of 1998

ORDER:

This Writ Petition is filed seeking a Certiorari to quash the Proceedings in Ref.No.299/A3/KU/1997, dated 22-5-1997 of respondent No.1 in treating the petitioner as Grade-II Officer as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India and consequently to direct the respondents to pay pension and other benefits as applicable as on last pay drawn by the petitioner as Grade-I Officer together with interest at the rate of 18% per annum from the date of retirement till realization of the amount.

It appears, petitioner joined the service of the respondent-University as Manager (Care Taker), which is a Grade II post, in the year 1970. While so, on 2-5-1988, the Executive Council of the University had taken a decision to upgrade the post of Grade-II Officer as Grade-I Officer and further on 27-3-1989 the respondent-University recommended the case of the petitioner to the Government for ratification/approval of its action in promoting the petitioner as Grade-I Officer. Thus, the petitioner worked for more than 7½ years as Grade-I Officer and thereafter, retired voluntarily from service with effect from 8-12-1995. On 4-3-1996 when the petitioner submitted his pension papers, they were returned vide letter dated 5-2-1997 of the respondent-University stating that the Local Fund Audit has taken an objection for awarding Grade I, since the Government has not passed any Order approving the upgradation of the post. Then, he resubmitted the pension papers and also made a representation on 27-3-1997 seeking to fix up and finalize his pension. Thereafter, the impugned

Order has been issued by the 1st respondent on 22-5-1997 stating that the Vice-Chancellor had ordered to treat the services of the petitioner as Care Taker-II (without prejudice to his claims as Care Taker-I) till the Government approves the upgradation of Care Taker I for finalization of his pension etc. and, however, the position of Care Taker I will be reviewed only after the receipt of the approval of the Government with regard to upgradation of Care Taker I. Challenging the same, the present Writ Petition is filed.

According to the petitioner, having served for more than 7½ years in the upgraded post and drawn salary and allowances in the said post as per the recommendations of Pay Revision Commission-1996, he could not have been denied the pensionary benefits etc., treating him as Care Taker Grade-II. In fact, the Executive Council passed a resolution upgrading the post of Care Taker Grade II to Grade I and further the University recommended to the Government for its approval. In the meanwhile, he retired from service voluntarily on 8-12-1995. Therefore, it cannot be said that there was no approval granted by the Government and he is not entitled for pension as Grade-I Officer; as such, the impugned Order is arbitrary and illegal and liable to be set aside.

A detailed counter affidavit has been filed by the 2nd respondent-Government wherein it is stated that due to efflux of time, the correspondence made by the Kakatiya University is not traceable, as the proposal said to have been sent to Government was through letter dated 27-3-1989. The records relating to general matters, other than policy decisions like G.O.Ms., G.O.Rt., and G.O.Ps, are not preserved for longer time i.e. more than five years. The instant issue is of a routine nature. Due to non-availability of old records dating back to 27-3-1989 as they pertain to non-policy matters in the Government, it is not feasible to take a decision in the matter. Further, the contention

that Government has not responded on the request of the University does not imply, by default, that the Government granted approval of the upgradation of the post as per the University proposal. There is no deeming provision in the Kakatiya University Act,1976. In view of G.O.Ms.No.347, dated 1-10-1993, such a contention does not entitle the petitioner to claim the benefits of Grade-I post. The approval of the Local Fund Officer, in the matter of fixation of pay as per the revised scales of 1993, does not create a right to the petitioner in the absence of specific prior approval of upgradation by the Government. Since the petitioner accepted his post with eyes wide open i.e. it is subject to approval by the Government, he cannot now turn back and state that he has a right to claim pension under Care Taker Grade-I cadre in the absence of approval from the Government. As per the material produced by the University, the petitioner was irregularly promoted to Care Taker Grade-I post without prior approval, which is mandatory; as such, the impugned Order was rightly passed by the 1st respondent. The Government cannot pay any excess amount than the sanctioned Block Grant and suffer for the irregularity committed by the University.

Respondent No.1-University has also filed a detailed counter affidavit taking the same stand as was taken by the 2nd respondent-Government.

Learned Government Pleader further submitted that as per Section 26 of Act 44 of 1976, the University shall not, without the prior approval of the Government, divert earmarked funds for other purposes or upgrade any post or revise the scales of pay of its staff or implement any scheme which involves any matching contribution from the Government or create a post resulting in recurring liability on the Government either immediately or in future. Petitioner is not entitled for fixation of his pension as a matter of right in the Care

Taker Grade I cadre, unless and until the same is approved by the Government.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

The facts are not much in dispute. The only fact, which is in dispute, is as to granting of approval by the Government. In the entire counter of the 2nd respondent, it is not stated that no such approval was granted by the Government. On the other hand, it is stated that the records pertaining to the said period are not available and, therefore, it cannot be said that the approval was granted in favour of the petitioner. This is a very peculiar stand taken by the Government in a case of this nature. The Executive Council of Kakatiya University, which is the apex body of the University, had taken a decision for upgradation of the post of Care Taker Grade II to Care Taker Grade I and the petitioner worked in the said post for more than 7½ years and drawn salary and other allowances as per his eligibility. Only when the pension papers were submitted, the Audit seems to have taken an objection that since there was no approval granted by the Government, the petitioner is not entitled for retiral benefits and pension as if he had retired from the post of Care Taker Grade I and he is entitled for benefits as if he retired from the post of Care Taker Grade II. It is not the case of the respondents that the Council had no power to upgrade the post or the University had no power to recommend the same to the Government. It is the case of the respondent-University that the Government has not approved its proposal. But, in the counter of the 2nd respondent there is no reference to show that the approval as sought for by the University, to upgrade the post of Care Taker Grade II to that of Care Taker Grade I, was rejected, except saying that the records are not traceable and as such, it must be deemed that the case

of the petitioner was rejected for approving the recommendation made by the University. This is very peculiar stand taken by the Government. Further, it is unfortunate that in the counter of the 2nd respondent, it is also stated that since the records are not available, in default, it cannot be deemed that there was an approval granted by the Government for the upgradation of the post of Care Taker Grade II to that of Care Taker Grade I as decided by the Executive Council of the 1st respondent-University.

In the peculiar facts and circumstances of the case, I am of the opinion that the proposal sent by the University was pending with the Government for more than 7½ years. This is very clear from the impugned Order itself, which says that the petitioner, for the present, may be granted pension treating him as Care Taker Grade II instead of Care Taker Grade I till the approval is made by the Government. The 2nd respondent-Government says that no records are available and as such, it must be deemed that no approval was granted. Petitioner worked for more than 7½ years in the post of Care Taker Grade I and retired from service voluntarily. Hence, his legitimate right for claiming pension against the post of Care Taker Grade I cannot be denied in the guise of non-approval of the action taken by the University. In fact, as noticed above, the resolution passed by the University upgrading the post of Care Taker Grade II to Grade I was neither rejected nor approved by the Government. The Government simply says that the records are not available. Petitioner retired from service voluntarily on 8-12-1995 and the Writ Petition is pending for the last about ten years. Even after passing of the impugned order and during pendency of the Writ Petition, nothing has happened. Under these peculiar circumstances, the respondents are directed to treat that the petitioner has already been granted with the approval of his appointment as Care Taker Grade I in pursuance of the resolution passed by the

Executive Council of Kakatiya University. Further, the petitioner is entitled for claiming pension and other retiral benefits as if he had retired voluntarily from the services of Kakatiya University as Care Taker Grade I. Therefore, the impugned Order is liable to be set aside and is accordingly set aside.

Accordingly, the Writ Petition is allowed. No order as to costs.

10-4-2007

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